

Date of decision: 10.4.96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(10.4.96)

Mr. P.K.Jani for the petitioner.
Ms. Sejal Mandavia for the respondents Nos.1&2
Mr. MR Bhatt for R.No.3

C.A.V. JUDGMENT :

Heard the learned counsel for the parties.

The petitioner was appointed as Secretary, after selection, on probation. This appointment of the petitioner was subject to the approval of the Director of Agricultural Marketing and Rural Finance, Gandhinagar. The Director of Agricultural Marketing and Rural Finance, Gujarat State, Gandhinagar, vide his office order dated 21-5-1986 approved the appointment of the petitioner. These facts are not in dispute. The services of the petitioner were terminated vide resolution No.7 dated 8th December, 1988. From the reading of the resolution aforesaid it comes out that his services were terminated taking into consideration the misconduct of the petitioner and treating him to be on temporary service.

2. The learned counsel for the petitioner contended that the petitioner was confirmed Secretary and not temporary, and as such his services could not have been terminated in the manner and the fashion in which it has been done in the present case. It has next been contended that the services of the petitioner have been terminated on the misconduct alleged and as such, being a permanent secretary, it could have been done only after giving him charge sheet and holding full-fledged inquiry. It has next been contended by the learned counsel for the petitioner that his services were terminated for misconduct and as such it could have been done only with the previous approval of the Director, as per sub-rule (3) of Rule 41 of the Gujarat Agricultural Produce Market Rules, 1965, which is not taken in the present case. On the other hand learned counsel for the respondents contended that it is a case of termination simpliciter of the probationer and as such no notice was required to be given, nor any inquiry was to be conducted. As it was a case of termination simpliciter of the services of a probationer provisions of sub-rule (3) of Rule 41 of the aforesaid rules did not apply. It has further been contended that confirmation of the petitioner was not approved by the Director and, though the Market Committee had confirmed the petitioner in service, the petitioner continued to hold the post on probation.

2. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Section 22 of the Gujarat Agricultural Produce Markets Act, 1963 provides for appointment of servants of a market committee and the conditions of their services. A Secretary is to be appointed for every market committee. Appointment of Secretary shall be made by the Market Committee with the approval of the Director, and subject to the terms and

conditions prescribed. Section 21 only contemplates for approval of appointment of Secretary, which has been admittedly given in the present case. Section 21 of the Act nowhere contemplates for approval of the Director for confirmation of a probationer on completion of the period of probation. Learned counsel for the respondents has not been able to point out any provision either from the Act or the Rules or from the Service Rules of the employees of the Agricultural Produce Market Committee, Visnagar, providing that the approval of the Director is required to be taken for confirmation of an employee.

4. Learned counsel for the respondents referred to Rule 3 of the Service Rules of the Committee and contended that as surety was not taken from the petitioner at the time of appointment his appointment was on probation. Rule 3 provides that every employee shall furnish surety in the prescribed form mentioned in the Schedule, from the date of his appointment. The Secretary has to furnish, over and above this surety, additional cash surety for such amount as may be prescribed by the Market Committee. I fail to see how this provision supports the contention of the learned counsel for the respondents. The term "employee" has been defined in the Rules to mean a person appointed temporarily or permanently for performing any duty in service of the Agricultural Produce Market Committee, Visnagar. Therefore, persons appointed, temporarily or permanently, are to furnish surety as per Rule 3 of the Service Rules. No distinction has been carved out whatsoever on the basis of nature of employment. The learned counsel for both the parties failed to assist the Court on the question, ' what is the distinction between permanent appointment and appointment on probation. Appointment on probation would mean appointment made on substantive basis. It is a permanent appointment. Appointment on substantive basis is appointment made after following the procedure laid down under the relevant Service Rules or Regulations, as the case may be, on a permanent post. Substantive appointment can also be made against a temporary post. It is not a case where the petitioner's appointment is irregular appointment or back-door entry. It is an appointment made after regular selection, and naturally an appointment on probation, subject to confirmation. Merely because the petitioner was appointed on probation, it does not mean that it is a temporary appointment. It is a permanent appointment, subject to confirmation on or before the expiry of the period of probation.

5. The petitioner's services were found suitable and satisfactory by the Committee. He was accordingly recommended for confirmation. It is true that the Committee

has sent the matter for confirmation of the petitioner for approval of the Director, but that act of the Committee will not make it a condition essential for confirmation of the petitioner when there is no requirement under the Act or the Rules or any other Service Rules of the Committee. As stated earlier, section 22 requires only approval of appointment. Rule 8 of the Service Rules of the Committee provides that a person who is appointed on any post of the Market Committee shall remain on probation for one year and if his work and conduct are found satisfactory after completion of the period of probation then he will be confirmed on that post with permission of the Market Committee. A plain reading of this provision gives out that for confirmation of a probationer permission of the Market Committee is required, and not that of the Director. Rule 8 further provides that in case the work and conduct of a probationer are not found satisfactory during the period of probation, then his services shall be dispensed with after getting approval of the Market Committee and no appeal shall lie against such order of discharge of that employee during the period of probation. This provision clinches the issue, and makes it abundantly clear that even for discharge of services of a probationer approval of the Market Committee is necessary and not that of the Director. It is also come from the reading of Rule 41 of the Gujarat Agricultural Produce Markets Rules, 1965. Subrule (3) of Rule 41 provides for approval only where Secretary is removed from office or reduced in rank or suspended. Termination simpliciter will not certainly be removal. From the reading of the provisions of subrule (3) of rule 41 it is clear that only in cases where action is taken for removal from service or reduction in rank or suspension of Secretary by way of penalty, previous approval of the Director is necessary. Suspension may be by way of penalty, if it is made under the relevant rules or in contemplation of departmental inquiry or during pendency of criminal investigation or trial. It is only in a case connected with disciplinary matters or order passed by way of punishment that the prior approval is necessary. In view of the position of law as it stands, and from the provisions of section 22 of the Act and Rule 41 of the Rules it is clear that in the matter of termination simpliciter, approval of the Director need not be there. But in the present case, though it is termination, it is not termination simpliciter because the petitioner was confirmed by the competent authority, i.e. the Market Committee. When it was not termination simpliciter of a probationer, it was a case of termination of a confirmed employee which could have been done only by way of punishment after holding an inquiry, and after affording full opportunity of defence to the petitioner. From the resolution passed for termination of services of the petitioner it is clear that

it was the result of misconduct of the petitioner. When termination of services of the petitioner was made for misconduct, it was a case of dispensing with his services by way of penalty, and in such cases the word "termination" used is not decisive. When the services of the petitioner have been dispensed with for misconduct, it is a case of removal from service which could have been done only after approval of the Director, which, admittedly, had not been taken. Therefore, on this ground alone the order of termination of services of the petitioner stands vitiated.

6. There is yet another ground in favour of the petitioner. When it is a case of removal of the petitioner from service for misconduct, it could have been done only after holding full-fledged departmental inquiry and not in the garb of termination simpliciter.

7. In the result this writ petition succeeds and the same is allowed. The resolution / order annexure-H dated 8-12-1988 passed by the Agricultural Produce Market Committee, Visnagar, is quashed and set aside. The respondents are directed to reinstate the petitioner in service forthwith. The petitioner shall be entitled to all consequential benefits flowing from this order. Rule made absolute accordingly.

8. In the present case the respondents have acted arbitrarily and in total violation of the provisions of the Act and the Rules and their own Service Rules. It is a fit case in which the petitioner should be awarded cost of the litigation. Order accordingly. The cost is quantified at Rs.2,000 (Rupees two thousand). The respondent No.3 is directed to pay the cost to the petitioner.